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DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT
OFFICE OF LAND QUALITY

RE: #09-615 (WPCB) (CFO Rulemaking)

These comments are submitted on behalf of the Livestock and Poultry Rule Revision Group. This group has been meeting for nearly three years in an effort to assist IDEM in crafting rules that will be protective of the environment while also maintaining the ability of livestock and poultry producers to continue in their profession and earn a living. The agricultural organizations which have participated in these meetings include Indiana Pork Producers, Indiana State Poultry Association, Indiana Beef Cattle Association, Indiana Professional Dairy Producers, the dues paying members of the Indiana Soybean Alliance, Indiana Corn Growers Association, Indiana Farm Bureau, Inc., Rose Acre Farms, and Creighton Brothers. We have also been assisted in our discussion and rule comment development by representatives of Purdue University, state and federal government agencies, and various consultants, including Brian Daggy, Michael Veenhuizen, Kristin Whittington, and Julie French.

We want to begin by thanking IDEM for its efforts in developing these rules. We are also appreciative of the willingness of IDEM to consider our concerns and comments in the development of the draft rule for second notice. There are new provisions in the rule which will be more protective of human health and the environment, and our members are supportive of those goals. Nonetheless, there are numerous provisions which will not provide additional protection of human health and the environment, are unreasonable or unduly burdensome, or are not based upon scientific considerations. These comments will focus on rectifying those provisions in this draft which should be revised so that they can be protective of human health and the environment while allowing livestock and poultry producers to continue to operate. Without the changes we propose, we are confident that many small and medium sized livestock and poultry producers will be forced to go out of business. Additionally, new operations will be required to continue to expand in size in order to absorb the costs associated with implementing this rule.

Guidance Documents

Prior to discussing the specific provisions found in the rule, we would like to note that several guidance documents will be needed to explain many of the provisions in this rule. We anticipate that guidance will be needed for manure sampling and analysis, for determining nitrogen availability, for soil sampling, analysis and interpretation, as well as for inspection and recordkeeping. Without these guidance documents and others which may be needed, it is extremely difficult to comment upon these rules because their impact

is not fully known. We are opposed to final adoption of this rule occurring before the development of needed guidance.

Potential Fiscal Impact

In the fiscal impact section, we believe that the analysis with respect to the fiscal impact of the change in phosphorus land based applications is incorrect. First we would suggest a change in the terminology used in this section. CFO operators now base land application of manure on manure nitrogen content, not soil nitrogen content.

While it may be true that the majority of acreage may have been subject to phosphorus based restrictions under the CAFO NPDES rule (and that conclusion is up for debate) the financial impact on those individual farms that are phosphorus limited will be significant. IDEM cannot project these costs as "modest" when 1500 operations across the state will have to reevaluate their land application areas. Those changing from a nitrogen to a phosphorus standard may require two to three times more acreage. The additional acreage may result in additional equipment purchases as well as high transportation costs. While livestock and poultry producers do not oppose using phosphorus limits for land application, they do believe that proper recognition must be made of the costs.

We also are concerned about the fiscal impact analysis with respect to Stormwater Pollution Prevention Plans. Based upon experience, the creation and implementation of a plan may greatly increase the costs to a livestock and poultry producer. Additionally, it is not clear that the costs of creating a plan will provide any measurable benefit.

Finally, no reference is made as to the fiscal impact of the groundwater monitoring requirements at 19-10-1 nor to the construction quality assurance plans in 19-12-4.

Definitions

Within the definition section of this rule proposal, we have several concerns over the scope of words and the terminology used.

Definitions, generally

The term "waste" appears most notably in the proposed definition of "manure," but it also appears repeatedly throughout the other definitions in this section. A valuable by-product of livestock production should not be considered waste. To classify this by-product more appropriately, "waste" should not be included in the definition of manure and the terms "manure," or "excreta," or other appropriate terminology should be substituted for "waste" throughout these definitions.

327 IAC 19-2-8

The definition of "contaminated run-off" in 19-2-8 needs to be clarified to fully explain the scope of the term. There have been concerns raised that contaminated run-off may include the mixture of dust and rainwater that comes from the roof of production

facilities. Also, we are concerned that there may be efforts to expand this to include the mixture of rainwater and dust from exhaust fans.

327 IAC 19-2-10

We suggest that the definition of "discharge" in 19-2-10 include a specific exclusion for agricultural stormwater. The NPDES program as defined in the Clean Water Act includes such a specific exclusion from the definition of a discharge. Given that current program implementation already considers whether a discharge was caused by a precipitation related event, it should be clearly listed in the regulations.

327 IAC 19-2-18

In 19-2-18, IDEM should recognize that determining whether land meets the definition of "highly erodible land" may be more complicated than a single definition. Should questions arise, IDEM should reference the NRCS Indiana Field Office Technical Guide Section II – Highly Erodible Land. Furthermore, given that highly erodible land is already subject to USDA oversight, farmers will know whether their property is subject to regulation under the CFO rule as highly erodible land.

327 IAC 19-2-20

We are concerned with the inclusion of injection in the definition of incorporation in 19-2-20. Injection and incorporation are very different manure application methods, and potential environmental concerns are different for those types of application. We urge that those two methods be separately defined and treated differently throughout the entire rule.

327 IAC 19-2-22

In the definition of "manure" found in 19-2-22, we are opposed to changing the term "excreta" to "waste." For environmental regulations, "waste" is a term of art which connotes a by-product from a process with little to no value. Manure is not a waste product in that it has a beneficial use as a nutrient source for crop and forage production. Thus, we oppose the connotation which has been given to manure. Importantly, this change may also create additional overlap and confusion with respect to oversight of livestock and poultry operations by the Solid Waste Management Board.

We also suggest that it is inappropriate to include "composted mortality" in the definition of manure. Throughout the rule, manure and mortality management are treated separately for substantive purposes. By combining mortality management and animal excreta into one term, confusion will be created in how to handle these two dissimilar materials. Specifically, it raises questions as to allowable disposal methods for dead animals.

We suggest that the definition should revert to the definition currently found in 327 IAC 16-2-22: "Manure" means any liquid or solid animal excreta or any used bedding, litter, waste liquid or contaminated run-off."

327 IAC 19-2-23

Building upon our comment with respect to the definition of "incorporation," we suggest that the definition of "manure application" in 19-2-23 include reference to injection as a separate form of manure application.

327 IAC 19-2-24

"Manure Storage Facility" is a new definition in this draft rule. This term ostensibly replaces both "Manure Storage Structure" (16-2-24) and "New Manure Storage Structure" (16-2-27), which was also eliminated in the draft rule. If it is IDEM's intent to have all manure storage facility requirements in the draft rule apply both to new and existing manure storage facilities, we must examine the possible ramifications of these requirements on existing manure storage facilities.

Similarly, the current CFO rule also contains several specific references to "liquid manure storage," which appears nowhere in the draft rule. If all requirements that apply to liquid manure storage only in the current rule now apply to all manure storage structures, the ramifications of this are also concerning.

We are also concerned with the inclusion of the phrase "manure containment area" in the definition of "manure storage facility." Manure containment area is not defined, but the remaining terms would seem to include any possible structure which could be used to store manure. Manure containment area is extremely broadly written and may be interpreted to have ramifications outside of manure storage structures. We suggest that "manure containment area" be removed or that "manure containment area" be defined so that comment can be made.

327 IAC 19-2-27

The definition of "owner/operator" in 19-2-27 includes a reference to 19-1-1(a). There is no 19-1-1(a), and 19-1-1 refers to the purpose of the article. We assume that IDEM's intent was to refer to the activities listed in the "Applicability" section of the current rule at 16-1-1(a), but the draft Applicability section at 19-1-2 has been modified from the previous version.

We also question the provision in (b) which states that contractors are considered owner/operators. Because the reference to 19-1-1 is unclear, we do not know which activities are being referenced. We anticipate that it should be easy to determine whether someone has the responsibilities listed in 19-2-27(a)(3) in order to qualify as an operator. Thus, it would appear that (b) may be unnecessary.

327 IAC 19-2-28

The definition of potentially available nitrogen at 19-2-28 seems to focus on the crop need rather than the amount of available nitrogen. We suggest revising the definition to state that potentially available nitrogen "means the amount of nitrogen that is realistically available to be utilized by a crop during one (1) growing season." We also believe that the treatment of potentially available nitrogen must include a consideration for reasonable losses of nitrogen based upon timing and method of application.

327 IAC 19-2-30

The definition of "production area" in 19-2-30 includes "composting piles" as part of the "manure storage area." It is not clear if this is composted manure or if IDEM is suggesting that this is "composted mortality" included in the definition of "manure." If this is meant to refer to "composted mortality," we do not believe that it should be included as part of the manure storage area. It is an entirely separate part of the operation. However, it is appropriate to consider "composted manure piles" as part of the manure storage area.

327 IAC 19-2-34

There is concern that the definition of "sensitive area" in 19-2-34 could be interpreted to mean that any area could be a sensitive area. The definition states that the concern exists with respect to sites that pose a water quality threat, yet several of the areas listed in (5) are not specific to water quality concerns. We suggest that "critical habitat" be rephrased to "habitat where an endangered species lives that would be impacted by a water quality threat." We also do not believe that just because something is a "natural area" that it automatically poses a specific water quality threat.

327 IAC 19-2-36

It is unclear why the current definition of spill must be modified to explicitly include the term "manure." We are not aware of any situations where someone has claimed an incident was not a "spill" because the product was manure. If the procedure is now to list out specific products, then all possible contaminants should be listed. However, manure should not be specifically singled out.

327 IAC 19-2-40 and 45

The definitions of "surface water" found in 19-2-40 and "waters" found in 19-2-45 are inconsistent. "Waters" is defined to include both surface and underground water accumulations. "Waters," which would appear to be the broadest category, specifically excludes private ponds, as well as off-stream ponds, reservoirs, or facilities built for reduction or control of pollution or cooling water prior to discharge. "Surface waters," which would appear to be a subset of "waters," includes "water present on the surface of the earth, and specifically is defined to include ponds. It would appear that the definition of "surface water" should be limited by the definition of "waters."

Related to this point, 19-2-45 states that the definition of "[w]aters" is as found in IC 13-11-2-265. Largely, it is. However, the last line of the definition has been changed from the statutory definition. The statutory definition is:

"Waters", for purposes of water pollution control laws and environmental management laws, means:

- (1) the accumulations of water, surface and underground, natural and artificial, public and private; or
 - (2) a part of the accumulations of water; that are wholly or partially within, flow through, or border upon Indiana.
- (b) The term "waters" does not include:
- (1) an exempt isolated wetland;

- (2) a private pond; or
- (3) an off-stream pond, reservoir, wetland, or other facility built for reduction or control of pollution or cooling of water before discharge.
- (c) The term includes all waters of the United States, as defined in Section 502(7) of the federal Clean Water Act (33 U.S.C. 1362(7)), that are located in Indiana.

The current definition at 16-2-45 and the definition in this draft rule vary in part (b). The exclusion of exempt isolated wetlands from the definition of "waters" has been removed. The exclusion has also been limited by the addition of the phrase "unless the discharge from the pond, reservoir, or facility causes or threatens to cause water pollution." We recognize that a portion of these differences are already contained in the current CFO rule. However, we cannot support the changes in the definition from the statutory definition.

327 IAC 19-2-44

The definition of "waste management system" has been modified to include process wastewater and mortality composting in addition to manure. This means that wherever the term "waste management system" is used, structures designed to manage mortality compost and process wastewater would be subject to the same requirements as manure storage facilities. This is unworkable.

Requirements intended to be placed on manure storage and handling systems in several sections of this draft rule should not apply to mortality composting and process wastewater. For example, throughout Rule 12, all provisions created to govern the storage and handling of manure that use the term "waste management system" would also apply to mortality compost and process wastewater.

This issue is further confused by the fact that a separate section has been created to govern mortality management including mortality composting sites at 19-7-6.

Performance Standards

327 IAC 19-3-1

In the performance standards found in 19-3-1, we are seeking clarification as to what will constitute a "discharge to waters of the state." As noted in our discussion of the definition of "discharge," manure application to land is appropriate and beneficial. However, we recognize that there may be instances where manure may leave the designated application area through no fault of the individual who applied the manure. Those events should not be considered discharges. Nonetheless, we do agree that confined feeding operations should be managed to avoid unpermitted discharges to the extent possible.

The provision included in 19-3-1(c) is confusing in that it has combined the ideas of spill prevention and spill response into one sentence. We suggest that "immediately" should be removed from (c). The term "immediately" implies that an incident is occurring and that immediate action needs to be taken to remedy the situation.

We are concerned with the ability of livestock and poultry operations to “ensure compliance with the water quality standards in 327 IAC 2.” The water quality goal outlined at 327 IAC 2-1-1.5 is to “...restore and maintain the... integrity of the waters of the state.” The next 113 pages of that article discuss dozens of very technical ways to meet that goal. Confined feeding operations should not be charged with trying to ensure that the state’s waters are in compliance with all of these water quality standards. While we certainly agree that livestock and poultry producers are responsible for ensuring against unpermitted discharges into the waters of the state, most of 327 IAC 2 is outside the scope of what these producers can control.

With respect to the performance standards for manure staging in 19-3-1, there is concern with the requirement that manure be staged or applied in a manner to prevent run-off or ponding for more than 24 hours. While steps can be taken to limit those events, whether a rain event occurs which causes run-off or ponding is ultimately beyond the control of the farmer. This provision should be amended to state that run-off and ponding should be minimized.

We also are concerned with the language in 19-3-1(e)(3) which requires that manure be staged or applied to minimize leaching beyond the root zone. It is not clear exactly what IDEM is proposing or how nutrient leaching beyond the root zone is measured. There are deep rooted crops such as alfalfa which will extend their root systems for several feet below the soil surface. This provision is vague and should be stricken. Otherwise, guidance should be provided as part of this rulemaking so that criteria for minimizing leaching beyond the root zone can be discussed.

General Approval Conditions

327 IAC 19-4-1

While we believe that the CFO rules are being drafted in such a manner as to provide for protection of human health or the environment in nearly any situation that may arise, we recognize that there may be some instances in which additional measures may be required because of environmental or geological conditions which have not been considered during the development of these rules. Thus, we recognize that the Commissioner may need to require additional design standards in a limited number of circumstances as provided for in 19-4-1(c). When those additional requirements are required, we suggest that the Commissioner provide written documentation to the applicant explaining the conditions. Language similar to that found in 19-5-1(c) should be included as a provision in 19-4-1.

Existing Confined Feeding Operations

327 IAC 19-6-1

With respect to requirements for existing confined feeding operations found in 327 IAC 19-6-1, we believe that there will be some confusion for whom the particular provision applies. Given the apparent application of 327 IAC 19-7-1 to existing confined feeding operations that have an NPDES permit, we believe that 19-6-1 should be revised to clarify that it applies to existing confined feeding operations with a CFO approval.

The requirement found in 19-6-1(b) that compliance is required by the effective date of this rule is also problematic. This rule amendment has been discussed for several years and it is anticipated that all parties involved will be suggesting numerous changes. It is not appropriate to require operations to make changes to any plans or operation until it is clear what the final version of the rule will be. Some provisions in this rule may place burdens upon livestock and poultry operations which will make it difficult to comply in such a quick manner. In order for operations to have enough time to comply with the regulations without undue risk of violations over which they have little to no control because of a change in the rule, we request that compliance be required six months after the effective date.

We also note that 19-6-1(e) states that an existing approval issued prior to the effective date of this rule remains in effect unless a renewal application is submitted. We question how it can be stated that an existing approval remains in effect when new requirements are being placed upon that operation.

We also question the language in 19-6-1(c) stating that an approval amendment is required for an increase in manure generated that reduces the amount of storage capacity to less than that approved in the most recent approval. This group is under the impression that the approval only indicates that there is a minimum of 180 days of storage. If no other indication of storage capacity exists in the approval, this provision should be clarified to indicate that an approval amendment is required when an increase in manure generated would reduce the storage capacity to less than 180 days storage.

Under 19-6-1(d), it is proposed that "any increase" in animal capacity, animal number, or manure containment capacity requires a new application. We begin by noting that IC 13-18-10-1 only lists "animal capacity and manure containment capacity" as triggers for seeking approval from the department. It thus appears that requiring an approval just for an increase in "animal numbers" is outside of the scope of the authority granted by the General Assembly. We do recognize that there are concerns with increasing the number of animals at a facility, but those concerns should be addressed in circumstances where more animal production space or manure storage is needed to accommodate the additional animals. Specifically, a facility may change production methods or move animals through the facility more frequently, resulting in additional animals on the

property at any one time. However, the existing facility capacities may be sufficient to handle the animals and the amount of manure they produce. In fact, some situations may result in less manure being produced. In that event, it would not seem necessary for the facility to seek a new approval. If anything, this would seem to get at the issue raised in 19-6-1(c) in which an approval amendment is required when the manure generated will reduce the storage capacity to less than the approved level. Additionally, (d) states that a new application is required according to "IC 13-18-10-1 and the requirements therein." IC 13-18-10-1 does not contain any requirements for an application other than to state that an approval from the department is required in certain circumstances.

Finally in 19-6-1(f), it states that a facility which becomes a regulated CFO after the effective date of the rule may be required to modify its waste management system to meet the requirements of the rule. We understand this to mean that extremely small operations¹ may be required to expand their manure storage capacity. Given the cost of expanding their manure storage capacity, the likely age of the facility, and the small size of operations, we anticipate that this provision will do nothing more than to force those operations to shut down. In the event that the agency proposes to require such changes, a written explanation for why those changes are needed should be provided. We suggest that 19-6-1(f) be amended to state that the commissioner shall provide written documentation of why the waste management system must be modified.

In 19-7-1, a procedure is established for confined feeding operations which have an NPDES permit to file a new application to be subject to the CFO rule. We believe this is unnecessary because those operations went through an application which included approval for construction under the CFO program and the more rigorous requirements of the NPDES program for operation. It should be sufficient for IDEM to establish a procedure by which their prior approval and NPDES permit qualify them for automatic coverage under the CFO rule provided that they provide notice and meet all of the requirements of the CFO rule. To force them to complete a new application and go through the application process is unnecessary. Additionally, it will subject them to financial costs which they should not be required to bear, in addition to defending their existing operation from attacks from those who want to do no more than to force the operations to be shut down.

In addition, it would appear that the language in 19-6-1(d) requires that an operation which is increasing "animal capacity, animal number or manure containment capacity" must file a new application. However, 19-7-1 does not list those criteria for any category to seek approval and make an application under the CFO rule. The language in 19-7-1 should be clarified that the application process applies to those operations not previously regulated under the CFO program or which are expanding animal capacity or manure containment capacity. The other option is to place language in 19-6-1(d) stating that the application must comply with 19-7-1. We also note here as we did for 19-6-1(d) that IC

¹ We assume this category to include those operations under 300 cattle, 600 swine or sheep, 30,000 fowl, or 500 horses.

13-18-10-1 only lists increases in animal capacity or manure containment capacity as triggers to require approval of the department before expansion can begin.

Application Requirements

327 IAC 19-7-1

In 2009, the General Assembly amended the statute for notice with respect to construction of a confined feeding operation to clarify who must receive notice. The law at the time required that adjacent landowners be notified. However, the determination of who must receive notice as an "adjacent landowner" was problematic. As such, the General Assembly amended IC 13-18-10-2 to require that notice be provided to owners and occupants within one-half mile of certain structures. That provision is included elsewhere in this rule. We suggest that the phrase "adjacent landowners" be removed from 19-7-1(b)(10) and the language should remain just "potentially affected parties" or the appropriate language with respect to those within one-half mile should be added.

At 19-7-1(c)(6), reference is made to mortality management plans. Please see below at 19-7-6 for discussion of our concerns surrounding mortality management plans.

We also question the meaning of 19-7-1(c)(13). One, it is unclear who is the applicant as that phrase is not defined. Furthermore, there is already existing confusion as applicants have been told by IDEM that owners, shareholders, and managers are all "applicants." This has greatly expanded the definition of who farmers generally believe should be considered as an applicant.

There is also a question as to the purpose of this provision. It would be beneficial for discussing this provision if we understood the concern that led to the inclusion of this language. Without knowing why it is included, we are unable to discuss it completely. However, based upon the language which is here, we have formulated several points for discussion. The threshold to be considered a CFO is relatively low, and any additional animal numbers over that threshold are irrelevant for purposes of triggering compliance with the statute and rule. Moreover, if someone is making an application for approval as a CFO, it would appear that they would include all of their facilities as either part of that same application or as separate applications. It should be up to the applicant to determine how best to seek approval for their facilities, i.e., whether they are part of one approval or covered by separate approvals. Importantly, there will be limits on the ability of operators to separate facilities from others, such as where there is shared manure storage or treatment facilities.

We are also concerned with 19-7-1(d) and believe that it is unnecessary. Specifically, it is not clear if IDEM is suggesting that all applications for a CFO approval must contain the material in (d) or only those from individuals who are required by IC 13-18-10-1.4 to report allegations against themselves of material violations of environmental laws. IC 13-18-10-1.4 applies to all applicants in that they must determine if they are required to submit additional information. If this provision is meant to apply to those who must report past material violations of environmental laws, this information is irrelevant to any

consideration which IDEM would need to make with respect to previously alleged environmental violations. If it is the former, which would include all operations seeking an approval, the requisite information related to soil testing and fertility levels is already contained within the manure management plan. Also, there is no reason for specific field soil tests to be included in the application. That material is more appropriately kept on the farm where it can be reviewed by IDEM inspectors if needed. If this provision does remain in the rule, the length of time for which soil samples are valid should be extended to four years because the majority of acres are planted to a corn/soybean rotation and more frequent testing is unnecessary. Also, there is no reason to list both phosphorus levels and soil fertility levels as requirements for submission of data. The rule proposes to limit applications based on nitrogen and phosphorus levels. No other nutrients are recognized to be limiting for application purposes, and indeed there should be no concern with soil level buildup of other nutrients. Nitrogen is generally not included in soil test analyses. Thus phosphorus is the only nutrient which should be a concern in soil testing for purposes of this rule. We also disagree with the requirement that manure application acreage needs be based upon the setbacks for surface application. Producers who choose to use application methods other than surface application should be allowed to use the relevant setback in their calculations. Requiring that the setbacks for surface application be used will greatly increase the amount of acreage needed for paper purposes even though it is not needed for actual production purposes.

327 IAC 19-7-2

There are several provisions within the section on plot maps, 19-7-2, with which we also disagree. First, we suggest that the plot maps include the boundaries of the parcels that contain the actual livestock and poultry production areas as well as the manure storage structures. This is compared to the requirement in (b)(2) for all properties affiliated with the confined feeding operation. We are concerned with this provision because some operations have several thousand contiguous acres and as written, the rule could be interpreted to require that parcel maps for all of those acres be included. To the extent those acres will be utilized for manure application, other provisions will require that the maps be included. But in those instances where the acreage is not part of the manure application area and does not contain livestock and poultry production facilities or manure containment, it is irrelevant to any decisions in approving the operation. This same concern extends to (b)(6) in that only the names of the owners of the parcels where the actual animal production and manure storage facilities are located should be included.

The rule proposal requires in 19-7-2(b)(4) that the manure application acreage calculations be done based upon the setbacks being determined using the surface application method. There is no logical reason to force a producer to determine acreage needs using the surface application setbacks if injection or incorporation is going to be used. Doing so will require the producer to have available acres which will not be needed for manure application. The requirement should be that setback calculations will be made based upon the type of application to be done. If necessary, documentation could be provided indicating the type of application method to be used.

We are also opposed to the requirement in 19-7-2-(b)(5) that the name of the owner of parcels where manure will be applied is included. This rule already requires that parcel maps with application field boundaries be included. This additional requirement of providing the landowner's name will not provide any additional information upon which important environmental considerations will be used. Rather, as has already occurred, this information will be used by opponents of particular livestock operations to harass landowners so that they do not allow manure application. Even worse, it could lead to landowners being sued, as has occurred, when they have no responsibility or potential liability for the fertilizer applications which take place on their land.

19-7-2(b)(6) is unclear. What constitutes a "parcel" of a CFO that hasn't already been listed in 19-7-2? What other structure or land area is this term referring to? The owner of the proposed production area would be the applicant. The owner of the manure storage facilities within that proposed production area would be the applicant. If another owner owns another manure storage facility not located on the proposed production area, that would be a satellite storage structure to which the CFO approval would not apply.

327 IAC 19-7-3

In 19-7-3, the inclusion of the existing structures is unnecessary as that information is already included as part of the facility detail page of the CFO application. Requiring that information be provided more than once only increases cost to the farmer and places a burden and costs upon IDEM to store and manage additional paperwork which provides no benefit to the agency or public.

The requirement in 19-7-3 with respect to identifying structures within 500 feet of the waste management systems is also confusing and needs to be rewritten because numerous individuals have interpreted the provision differently. We believe that it is stating that all buildings on the farmstead must be identified and that special features included in the listing from (1) to (9) that are within 500 feet of a waste management system must be included. Since 19-7-3(a) requires that approval dates for all existing structures be included, we are assuming that "all existing and proposed structures" means only those structures related to the CFO, and that buildings like houses, tool sheds, and garages would be excluded from this requirement.

327 IAC 19-7-5

Under 19-7-5(a)(4), the agency is requesting land use agreements which must be for the entire approval term. IDEM's concern should be that land is available for manure application for each year of the approval, but not that particular acreage is under contract for a five-year period. This is so because there may be reasons such as pending sale of property, change in crops produced, or change in tenant farmers which would require that a land use agreement be for less than a five-year period. Requiring that the agreement be for five years could restrict the ability of a livestock or poultry farmer to find enough landowners/tenant farmers willing to enter into such a long term agreement. Additionally, it is unlikely that any acreage would be needed for an entire five-year period. While application rates and manure values will dictate how frequently

application will occur, it is most likely that in a five-year period a field will only receive two or three applications.

Once again, we also object to the language which requires that acreage for application be calculated based upon setbacks for surface application regardless of whether surface application is being utilized. A producer should be allowed to base setbacks on the method of application to be utilized so long as they commit to that method of application.

We are also concerned with the provision in 19-7-5(a)(4)(C) requiring that the land use agreement be with the owner of the property. Depending upon the circumstances, the owner of the property may have no right to contract for or determine whether manure is used if there is a tenant farmer who has the authority for those decisions in a separate contract with the landowner. It is more appropriate that the land use agreement be between the livestock and poultry producer and the individual who has authority to contract for the application of manure. In the case that the livestock and poultry producer is going to be applying manure on rented land, a land use agreement signed by the tenant farmer submitted along with a memorandum of the land lease for crop production should be sufficient. We also question whether the requirement that land use agreements be in place for five years may limit the amount of acreage available for manure application. It is quite possible that a land use agreement could be in place for one farm to make sure that enough acreage is available but that a manure application is never made. In those instances where the land is not being used by the individual who has the land use agreement, a separate operation should be able to enter into an agreement to apply manure to the land with the original agreement being cancelled.

There is a concern that this rule may be used to prohibit manure application to land which was not identified as application area during the approval process. It is important that producers be able to change fields, add new ground, or sell their manure even if not included as part of the approval process. Flexibility is important to the ability to manage nutrients in a manner that are protective of the environment.

In 19-7-5(a)(6), the requirement exists to manage the migration of and removal of solids from the manure storage facility. This language is not clear, but we anticipate that it is referring to how one will maintain the integrity and capacity of liquid storage systems in which solids have settled out. Specifically, we assume that this language is referring to how the solids will be removed without damaging the liner of a storage structure. We suggest that this section be clarified to apply to solid removal in liquid manure handling systems or that additional information be provided.

The provision in 19-7-5(c) is unclear in that the subsection is purported to be describing the procedures for soil testing. However, it states, "A soil test must be obtained..." It is not clear if this is suggesting that the type of test must be sufficient to indicate certain information or whether a test must already be done and on file. It is our understanding that as written by the General Assembly at IC 13-18-10-2.3 a CFO must submit a manure management plan that "... outlines procedures for soil testing..." The intent of 13-18-10-2.3 is to require submission of the procedures used for soil testing rather than to mandate

the submission of soil tests. As this section is drafted, it implies that a soil test must be completed by the livestock or poultry producer for any field which may be utilized for manure application.

We also question the use of the phrase "soil fertility" rather than "soil phosphorus." There is no indication anywhere else in the rule that IDEM is regulating manure application for nutrients other than nitrogen and phosphorus. Soil testing is not used to determine nitrogen levels in a field but is used to determine phosphorus levels. While we recognize that other nutrients are present in manure and that farmers will account for them, this regulatory process is not the appropriate manner in which to account for them. This is especially true in that the other nutrients are generally not cause for concern for buildup in soil or loss to water.

In 19-7-5(e), we do not disagree with the sentences which come after the requirement that one manure test must be conducted for each type of manure. However, we believe this information is better left to guidance rather than being included in the rule.

Given that the manure management plan is meant to be the plan for how one will account for nutrients in the field as well as determine what is present in the manure, we suggest that 19-7-5(c)-(e) be removed and made part of their own section.

327 IAC 19-7-6

This draft rule currently has provisions specific to mortality management at 19-7-6, however, as discussed above, by including mortality composting systems in the definition of "waste management system" at 19-2-44, there is a great deal of overlap with 19-7-6 in other areas of this draft rule. The fact that BOAH already regulates the disposal of dead animals further adds to this confusion.

We understand IDEM's concerns in seeking to regulate dead animal disposal. We also acknowledge BOAH's agreement that it is appropriate for IDEM to regulate dead animal disposal as it relates to water quality issues. Nonetheless, as evidenced above, we think such dual regulation only leads to confusion and greater potential for producers to unknowingly violate the law. To minimize this potential for confusion, IDEM must strictly limit its intervention in this area to water quality issues.

The most clear, concise way to achieve this goal would be to take the provision for dead animal compost operations in the current rule at 327 IAC 16-9-3 and modify it by replacing "dead animal compost operations" in 16-9-3(a) with "mortality management systems." This would put a requirement in place that any and all methods of managing mortality must have appropriate run-on and run-off control. This coupled with BOAH's existing regulations would resolve this issue while minimizing the regulatory overlap.

Notwithstanding our suggestion above, we have identified several problems with the language in 19-7-6.

The section on animal mortality also only addresses temporary storage, burial and composting. We assume that incineration will continue to be authorized, and that the temporary storage is available for animals to be picked up for rendering. Thus, to the extent IDEM intends to regulate incineration, those provisions should be included within this rule.

In 19-7-6(b)(1), the rule states that the soil must be of a type to inhibit leaching from the burial pit. This provision is requiring that producers guess whether the soil type inhibits leaching. It is more appropriate for the rule proposal to delineate those soil types where burial is not allowed. It would appear that the list in (c)(3) meets this purpose. IDEM should ensure that this list is complete and eliminate the provision in 6(b)(1) respecting soils which inhibit leaching.

There is also concern that several provisions in (c)(1) are too restrictive. Specifically, surface water body includes any water on the surface of the earth. This could include water which ponds after a rain storm or privately owned farm ponds. Requiring setbacks of 300 feet from potentially ponded areas greatly reduces the area for burial without providing any environmental benefit. Furthermore, it is unclear what the concern is with respect to surface water with burial. According to BOAH regulations, animals must be buried six feet below the surface. It is not at all clear how a burial four feet below the surface could contaminate surface water. We surmise that the concern may be with respect to erosion and resulting exposure of the dead animal to the surface, but this would only be a concern where the animal is buried extremely close to a channelized surface water, such as a creek or river.

We also suggest that the setback from water wells should be from drinking water wells for human consumption. It is possible that a monitoring well, irrigation well, or well for farm use could be within the setback distance without risk of contaminating ground water.

Under 19-7-6(c)(2), "adjacent" should be clearly defined. Otherwise, questions will arise as to how many feet should be between a disposal site and a tile before it is considered adjacent. We suggest that the provision require burial sites be at least 10 feet from *known* tiles, as some tiles may be present without the knowledge of the owner.

In (c)(3), we suggest that the sentence be modified by adding "unless a plan is developed to prevent groundwater contamination" after "SC." While the soils listed would have higher risks for contamination of ground water, practices could be put into place to reduce that potential.

Within (d)(1), we once again believe that the setback requirements are too stringent. "Water wells" should be limited to "drinking water wells for human consumption." Property lines, to the extent the provision exists to provide protection for water quality, should focus on "property lines of adjoining landowners." There is no reason to require a setback from property owned by the livestock or poultry producer.

The language in (d)(2) is confusing in that it requires the structure to be constructed and operated in a manner to prevent leachate. As written, it requires that leachate not be allowed to form, which is impossible to achieve. The provision should be revised to state that the facility should "be constructed and operated to prevent leachate from getting into ground or surface water."

We also believe that the provision in (d)(3) should be rewritten to state that it should be constructed and operated in a manner to control run-on and run-off to prevent contamination of surface water by process wastewater. Run-on and run-off of clean stormwater is not a concern, and eliminating run-off is essentially impossible. In actuality, run-off of process wastewater is not a concern so long as the run-off is managed appropriately.

We do oppose the provision in 19-7-6(d)(4) with respect to scavenging by other animals. We recognize this is a concern but it is not within the realm of issues which are appropriately regulated by IDEM. Rather, it is a concern for BOAH. To the extent IDEM is attempting to address issues which have been raised by neighbors to livestock operations, we understand that BOAH was often not notified in those cases and was thus unable to utilize their authority in those matters.

Finally, we are opposed to submitting a mortality management plan to IDEM. The construction parameters such as setback and design of facilities will be part of the application. Any additional requirements for disposal are addressed by BOAH's rules and this rule should not contain provisions which usurp BOAH's authority to regulate dead animal disposal.

Approval Process

327 IAC 19-8-1

With respect to the length of an approval, we agree that five years is an appropriate length of time. However, as 19-8-1 is written, the approval process could be less than five years on a renewal if IDEM issues it before the original approval expires. We think it is more appropriate that the renewal begin on the day that the previous approval expired so that each subsequent renewal stays five years rather than some shorter duration.

327 IAC 19-8-2

The terminology used in 19-8-2(b) is unclear. We are concerned that individuals will have difficulty understanding the meaning of the paragraph. As such we suggest that the third sentence be revised to state, "A confined feeding operation that has been subject to an enforcement action by the department pursuant to IC 13-30-3 for a discharge within the previous five (5) years shall be subject..." Likewise, we suggest that the last sentence of the paragraph should be revised to state, "A confined feeding operation that has not been subject to an enforcement action by the department pursuant to IC 13-30-3 for a discharge within the previous five (5) years shall be considered..."

The language in 19-8-2(c)(3) is confusing as written and should be reworded. We suggest that it state that, "Updated information if any information required by 327 IAC 19-7-1(c) has changed from the original application or a previous renewal."

For the provisions which are contained in 19-8-2(c), we suggest that the only information which should be required to be submitted is information which has changed from the previous approval. Items such as a farmstead plan should not be required to be resubmitted if information has not changed. While we oppose the submission of a mortality management plan, if one is required, it should only be submitted if changes are made. With respect to a minimum number of acres for manure application, we oppose the requirement to maintain available acreage for the manure or litter which is not applied by the confined feeding operation but is transferred to another party. This will be further discussed in 19-14-7.

327 IAC 19-8-3

As noted in our discussion about the amendment provisions found in 19-6-1, we are uncertain about the recording in the approval of the actual storage capacity. Thus, we are somewhat uncertain as to the meaning of 19-8-3(a)(3). If the approval indicates that a minimum of 180 days storage is available, there would appear to be no need to amend an approval if storage capacity were reduced from, as an example, 360 days to 300 days. It would seem appropriate that nothing more should be required so long as 180 days of storage is maintained. However, if the language in the approval is more definitive and indicates the actual number of days of storage, then we suggest that an amendment should only be needed if the capacity were reduced by a certain percentage, such as ten percent from the most recent approval. Otherwise, minor changes which result in the loss of a few days of storage capacity would require amendments but would provide little or no environmental protection.

At 19-18-3(b), further clarification is needed for what constitutes "any changes to the operation as approved." This could be interpreted to state that if the operation was approved for 4,000 hogs but the number is later reduced to 2,000, either an amendment to the approval is needed or IDEM needs to be notified in writing that the entire capacity is not being used. Written reasons for why an amendment is required should be provided by the department.

327 IAC 19-8-4

Turning to the provisions on denials, we do not understand 19-8-4(a)(1). If someone is making an application for approval, with what current approval conditions must they be in compliance? We take this to mean that an application will be denied if the application reveals that the confined feeding operation will not be designed and/or operated in such a manner as to meet the requirements of the confined feeding rule. However, we do not believe that the rule is clear in this regard.

For the sake of expediting application approvals, we agree with IDEM that complete applications are necessary. We also believe that IDEM should have the ability to deny

applications which the applicant has failed to complete upon receipt of two notices of deficiency. However, in order to support this provision as included in 19-8-4(a)(2), IDEM must provide a complete list of deficiencies with each notice sent. It is not appropriate for IDEM to provide a notice of only one or a few deficiencies with knowledge that several deficiencies exist. In the past, the practice of providing notice on only one deficiency at a time has occurred. We are aware that IDEM has been working to implement changes to prevent this practice. Thus, we suggest that the language be revised to state, "Submit a complete application after receipt of two notices of *the same* deficiency on the new or renewal application." (newly suggested language in italics) This provision should not be interpreted to allow the agency to deny an application when the newly submitted material which was provided to comply with the notice of deficiency raises new questions by the agency.

327 IAC 19-8-5

We support the ability of the department to revoke an approval when necessary. However, we suggest that approvals should only be revoked for egregious behavior and not because political pressure has been applied to the department. We suggest that the language in 19-8-5 state "as a result of a violation that results in substantial impacts to human health or the environment." It would also not be inappropriate for the agency to revoke an approval for a producer who continuously and knowingly violates the law.

327 IAC 19-8-6

Livestock and poultry producers support the continued ability to transfer a permit. They also understand that IDEM must receive timely and proper notice of proposed transfers. However, we have repeatedly heard that the date for closing of a sale routinely changes. Thus, in order to maintain the needed flexibility in providing notice to IDEM, we suggest that the opening clause in 19-8-6(a) be deleted and the sentence be revised to "Prior to transfer of the ownership of a CFO, the parties... (1) the anticipated date of transfer..." We propose that a new subsection (b) be created which requires that actual notice of the date of closing and assumption of responsibilities will be provided within ten days of the closing.

327 IAC 19-8-7

Within the provisions with respect to notice found in 19-8-7(a), we do not believe that the notice should be required to be provided to neighbors on a state form. Rather, we feel that applicants should be able to provide their own letter as notification so long as all pertinent information is included. Most applicants believe that a personal letter is a more appropriate way to address their neighbors with respect to their plans. We have received indication from some individuals that personal letters will be sent regardless of whether an applicant also must send notice on a state form. This is duplicative and unnecessary. We note that this subsection mirrors the authorizing statutory language in IC 13-18-10-2 with the exception of the language requiring that the notice be sent on a state form which was not a requirement from the General Assembly.

Aside from references to the proposed state form and a proposed requirement for the inclusion of the dates comments will be accepted by the department, we recognize that

the language in 19-8-7(a) is taken from IC 13-18-10-2(b). However, the last sentence should be revised to state that an affidavit must be filed that certifies that the applicant will comply with the requirements. As currently written, this language requires the affidavit to be submitted before the time period expires for notice to be given to the appropriate parties.

In regard to 19-8-7(b), we submitted comments several months ago for this rulemaking, indicating that fifteen days was an appropriate period for comments to be filed. If the Administrative Orders and Procedures Act deems fifteen days an appropriate length of time to submit a written petition for review of an order, it is surely sufficient for collecting public comment on a CFO application. Even if IDEM deems fifteen days inadequate, forty days is still too long. Consider that forty days is longer than generally given to comment upon the rules which establish the regulations for certain activities. More importantly, we believe that it is inappropriate to comment upon the application. Rather, comment should only be allowed upon the rule during the rulemaking process, or in some instances, on the permit conditions. Use of the comment process should not be condoned for the purpose of harassment or to request conditions which are not required by the rule.

Operating Record

327 IAC 19-9-1

The provision in 19-9-1(b)(14) is not written as a record which must be kept but instead is a command for a certain action to be taken. It also makes reference to nutrient leaching, which fertilizer recommendations were not designed to minimize. It should be rewritten to simply state "soil and manure tests."

The language in 19-9-1(b)(16) should be simplified to state, "Copies of any written waivers reducing the setback distances."

Ground Water Monitoring

327 IAC 19-10-1

Turning to ground water monitoring requirements found in 19-10-1, we are extremely concerned about what is contained in this provision as well as the information which is not present. During the rulemaking process we repeatedly requested that this rule include the conditions that will trigger the requirement for ground water monitoring. Those provisions are still not included in this rule proposal. For planning purposes, it is imperative that an applicant know whether or not ground water monitoring will be required when submitting an application. Unfortunately, this proposal allows for the continued requirement of ground water monitoring to appease complainants rather than basing the requirement on scientific need. We cannot support any ground water monitoring requirements, whether as a condition of this rule or at the discretion of the commissioner, unless the conditions which will trigger the requirement are clearly delineated in this rule. We suggest that the requirement for monitoring should be related

to geologic or design criteria which indicate that ground water contamination is an actual concern.

For the information which will be required as part of the ground water monitoring, the presently proposed requirements are too burdensome and expensive to be justified. We suggest that when monitoring is required that one or two indicators be monitored, such as "field specific conductance." If that test indicates cause for concern, then additional monitoring should be taken to determine if an actual problem exists. With respect to the other monitoring parameters, we do not believe that there is any reason to check for phosphate levels as the likelihood of leaching to ground water is extremely minimal.

It is highly important that background levels be determined prior to introduction of manure into the facility, such as during construction. Without having representative background samples, subsequent sampling will be inadequate to provide any relevant information as to whether the confined feeding operation may be causing groundwater contamination. We also do not believe that it will be feasible for a farmer to determine whether or not there has been a statistically significant increase over background levels. To find statistical significance, a large data set—much larger than anyone would collect for purposes of sampling for this rule—would be required. We also believe that ground water monitoring results should be submitted just one time per year.

Under (c), a risk assessment should be conducted prior to any corrective action being ordered. It is standard practice to determine the risks associated with the contamination prior to performing any corrective action. Without knowing the risk profile, it is unlikely that a proper corrective action, if any is even needed, would be taken. We are also unclear as to how a "statistically significant increase" would be defined.

Finally, as noted above, the cost of ground water monitoring was not included in the fiscal impact analysis. As proposed, ground water monitoring will have a huge financial impact upon facilities which are required to monitor. The fiscal impact must be considered.

Storm Water Pollution Prevention Plan (SWP3)

327 IAC 19-11

As a general proposition, we are not opposed to the idea of managing storm water to reduce risk of pollution. Nonetheless, the proposed storm water pollution prevention plan requirements go beyond what is practical for the types of operations being regulated in this rule and the types of pollutants which are present.

We suggest that greater benefit would be seen by requiring that best management practices be utilized to address storm water issues rather than to require extensive storm water management plans which are expensive to create and which require extensive documentation and explanation for pollutants which are not extremely harmful and which are fully known and anticipated to be present in small quantities on the production area. Guidance should be provided which explains the best management practices which may

be utilized. This approach would be sufficient to minimize impacts to aquatic life through pollution carried by storm water.

In discussing the fiscal impact of an SWP3, it was explained that costs would come in creating a plan, conducting routine inspections to determine if changes are needed, and in the form of monitoring for sediment and nutrient loadings. These are high costs for little return, and the fiscal impact statement failed to consider the costs of control structures which will be utilized. By using best management practices, the cost of creating a plan will be reduced or eliminated. Additionally, testing for nutrient loading and sediment is not needed as the presence of either in storm water runoff will be extremely small. Thus the cost vastly outweighs any benefit to be gained.

327 IAC 19-11-1

Notwithstanding our suggestion that more value is gained by requiring best management practices in controlling storm water, we will provide comment upon the proposed requirements for the SWP3. In the general requirements of the SWP3 found in 19-11-1, the use of "periodically" is vague and any requirement for review should be "annual." The provisions for implementation in (c)(3) are also problematic in that the provision is vague and/or inconsistent. We suggest that a new subsection (d) be created with three categories: (1) newly constructed CFOs which must comply prior to populating, (2) existing CFOs which must comply within 180 days of the effective date of the rule, and (3) facilities in existence which become a CFO must comply within 180 days of becoming a CFO.

More concerning than the timeline for implementation is the treatment of livestock and poultry operations in consideration of the type of pollutants considered in this rule. The types of pollutants potentially present are not those that are unduly dangerous to individuals. The impacts from storm water runoff from a livestock or poultry farm are likely to be minimal with some potentially small impacts to aquatic life. The real concern is for spill events which may discharge large quantities of pollutants that may kill fish or other aquatic life. Those events are not addressed with a SWP3.

327 IAC 19-11-2

In 19-11-2(4)(C)(vi), the phrase "solid or fluid wastes" is used. We do not believe that this is referring to "solid wastes" as defined in 13-11-2-205. Nor is it clear exactly what is meant by "fluid wastes." We anticipate that it is referring to nothing more than waste material in a liquid form. However, we urge that this provision be reworded so that there are no uncertainties about the types of products being discussed.

The requirements for monitoring are found in 19-11-2. While we understand that monitoring is viewed as a method to determine whether practices are working, the results are often confusing and irrelevant. Water quality sampling is a sophisticated process which is not easily done correctly. The logistical challenges associated with monitoring have the potential to create inaccurate results. More concerning is that the information gathered can indicate that a problem exists, but it does not show the cause of the elevated levels of pollutants. Total suspended solids, ammonia and biological oxygen demand can

all be found to be at high levels with no fault of the livestock operation. Pollutants can come from different sources and ammonia levels can be high because of air deposition. If monitoring is to be done, the requirements and expectations must be reasonable so that farmers are not put into a position of defending themselves against unfounded accusations of pollution.

327 IAC 19-11-3

If a best management practices system is utilized, there will be no requirement to amend plans as provided for in 19-11-3. However, if amendments to plans are to be required, the provision in 19-11-3(a)(1) is extremely flimsy. As written, it currently requires an amendment whenever a change "has the *potential* to have a significant effect on the *potential* for the discharge of pollutants." (emphasis added) There needs to be a risk that is more concrete than the potential to increase the potential for a discharge.

Setbacks

327 IAC 19-12-1

It is appropriate for extra precaution to be required before a livestock or poultry operation can be constructed in areas where risk for environmental harm is greater. The provisions in 19-12-1 are acceptable requirements with the exception of (4), which prohibits construction over mines. We assume that the concern is subsidence, but factors such as depth of the mine and type of rock material over the mine should be considered before determining whether construction is prohibited. This prohibition is especially troublesome when considering that dry manure and litter systems would pose little threat of contamination if constructed over a mine. While (b) allows for additional information to be shown to allow for construction in karst terrain, no similar provision exists for any of the other categories. We also suggest that if the commissioner is going to require additional information to allow for construction in karst terrain that the request for information should be in writing and details should be provided on why the information is needed.

327 IAC 19-12-2

The setback provisions of 19-12-2 raise a few concerns. As we have noted in previous sections, setbacks from all "surface waters of the state" raise questions as to scope and present some challenges in implementation. Specifically, surface water is all water present on the surface of the earth, which would seem to include ponded and diffuse flowing water from a storm. We do not know how someone could guarantee that the facility would always be 300 feet away from such surface waters. We also question the need to be 300 feet away from any surface water as that number seems excessive. This is especially the case with a private farm pond, which is also classified as a surface water of the state. With respect to water wells, we suggest that the setback should be from drinking water wells used for human consumption.

Given that this regulation is with regard to environmental regulation, and specifically water quality, we cannot support (b)(3). The decision to create a setback from off-site residential and public buildings is a decision appropriately addressed through zoning. It

is not within IDEM's purview to include such a requirement when there is no connection to water quality concerns.

327 IAC 19-12-3

As now written, 19-12-3 may be interpreted to mean that all confined feeding operations regulated under the CFO rule must have 180 days of available storage, including those constructed under previous versions of the statute that required less capacity. We suggest that this subsection clarify that those operations do not have to increase their storage capacity to 180 days unless they expand their operation by constructing new buildings or manure storage structures.

In reading the provisions in (3)(a), the prescriptive list is unnecessary and potentially too restrictive for some situations while being too inclusive for others. We suggest that (a) be revised to require that the storage capacity include all manure and other waste liquids which will be diverted to the structure. As now written, the provision could require capacity to be constructed for liquids which are handled separately from the manure storage, such as non-contact cooling water which may be discharged, or rainfall which is diverted from the facility. In the event that the buildings and manure storage are entirely enclosed, there is no need to account for any rainfall falling on the manure storage structure or buildings.

Subsection (a)(8) would seem to be more appropriately combined with (b)(2) to discuss the twenty-four hour, twenty-five year storm events as part of one provision since the two subsections seem to overlap.

The listing of soil classifications in (d) should be set off in a parenthetical or the sentence should be revised to clarify that those soil classifications listed are the specific ones on which construction is restricted.

We are concerned that the requirements outlined in 19-12-3(f) are restrictive and provide a one-size fits all approach to the design and construction of concrete manure storage facilities. The definition of manure storage facilities at 19-2-24 includes "any pad, pit, pond, lagoon, tank, building, or manure containment area." The requirements of 3(f) will require any pad, pit, pond, lagoon, tank, building, or manure containment area constructed of concrete to comply with requirements specifically developed for rectangular liquid concrete manure storages or be designed and certified by a registered professional engineer. This provision would require that any manure storage facility that is not a rectangular concrete manure storage, such as a solid manure storage or dry litter stack building be designed and certified by a professional engineer.

Direct reference to specific design manuals and guidance documents in the rule is unnecessary and eliminates flexibility in the design and construction process to adopt new standards, technologies, and practices. It is agreed that appropriate standards are necessary to assure proper design and construction to protect human health and the environment. It is recommended that the specific references to design manuals and guidance such as "Midwest Plan Services guidance for Rectangular Concrete Manure

Storages, 2005 Edition” and “NRCS standard: Construction Specification, Concrete Construction, October 2005 Edition” be deleted from the rule and placed in guidance as suggested or referred to practices.

As written, 327 IAC 19-12-3(f) singles out one design consideration (soil bearing capacity) and one construction specification (slab/floor thickness) without sufficient consideration of the type of manure storage facility and existing site conditions. It is unnecessary to identify specific minimum values for selected design considerations or construction practices to protect human health and the environment. This prescriptive approach to concrete manure storage facilities is restrictive, can be cost prohibitive, and prevents the use of concrete manure storage facilities in areas where the natural soil bearing capacity is less than 2,000 pounds per square foot similar to Starke County, Indiana. It is recommended that specific design considerations and specific construction specifications be deleted from the rule. If it is necessary, these can be discussed in guidance to give direction to the producer, applicant, designer, and contractor.

We do not agree that a professional engineer’s design and certification is required for concrete manure storage facilities. This results in additional costs and potential time delays to the producer that yield little or no positive return. Concrete is a predictable, consistent, and reliable building material. Many of the manure storage facilities submitted to IDEM for approval are similar and include common features and components making it unnecessary to require that a professional engineer’s certification be provided. As part of the current permit review process, IDEM’s engineering staff review all manure storage facility designs for compliance with design standards and construction specifications. If a professional engineer’s certification is required for all concrete manure storage facilities then it will not be necessary for IDEM to review the design and construction specifications as part of the approval process.

It is recommended that 327 IAC 19-12-3(f) be deleted. The performance standards within 327 IAC 19-3-1, IDEM’s guidance documents, and IDEM’s permit and approval renewal procedures are sufficient to assure protection of water resources of the state, human health, and the environment.

The provisions outlined in 19-12-3(g) overlap the requirements in 19-12-3(a), specifically 19-12-3(a)(6) and appear to be specific to liquid manure storage facilities. The definition of a manure storage facility is interpreted to also include solid manure storage structures. This provision is unclear as to its true intent. If this provision is specific to liquid manure storage facilities then it needs to be clearly stated.

We also urge that 19-12-3(h) include a requirement that the commissioner must provide a written explanation when requiring testing of the manure storage facility.

327 IAC 19-12-4

We agree that facilities which discharge must have an NPDES permit. However, if the only discharge is of non-contact cooling water, an NPDES permit should only cover the non-contact cooling water and the manure management aspects of the production area

should continue to be regulated under the CFO program. We suggest that 19-12-4(a) be revised to clarify this requirement.

Sampling of water from perimeter tile is addressed in 19-12-4(b). Recognizing that this has occurred for several years and that the information may be useful in some instances, we are not opposed to it. However, we caution IDEM on its use and the interpretation of results. Given that there can be many sources of ammonium-N in water, elevated levels should not automatically trigger a determination that a manure storage structure is leaking. Finally, the 50 feet requirement is not appropriate in all situations. Sampling points should be established on a case by case basis to provide for the capture of a representative sample of the groundwater.

Generally in (c), we feel these parameters are overly restrictive. As written, they seem to even prohibit tying into an existing drainage tile. In (c)(3), the requirement for a back up pump is unnecessary so long as the operator has access to a separate pump that can be utilized in the event of failure of the primary pump.

In (c)(4), we recognize the concern that the outlet of groundwater through a perimeter tile should not be done in a manner to impact adjacent property owners. However, the restriction that an outlet must be either twenty or fifty feet from a property line may be excessive if the water can be safely placed into a ditch or creek which is within the setback and will carry the water away. As written, this provision could require that an outlet be in a field which will impact crop production.

The requirement for construction quality assurance plans found in 19-12-4(e) will greatly increase cost. This cost was not included in the fiscal impact analysis, and we do not believe that this requirement will provide additional environmental protection.

In (f), we understand that notice to IDEM of the start of construction is important, but the requirement to provide fourteen days notice is difficult in many circumstances and seems excessive for some of the simple construction tasks which take place. Producers often are ready to begin construction as soon as IDEM issues the approval, but the date of approval is out of the control of the facility. Additionally, construction schedules will sometimes be moved up because of completion of other jobs or inclement weather for other construction sites. In those cases, flexibility is needed.

327 IAC 19-12-4 and 5

Within the technical requirements found in 19-12-4 and 19-12-5, we do believe that they are largely overly restrictive, do not provide needed flexibility, and will provide no additional benefit to human health and the environment. The requirements explicitly state that which must be done and allow for little deviation in some cases and no deviation in others. At the same time, the rule proposes that a registered professional engineer develop and certify a construction quality assurance plan for all manure storage facilities. This may be appropriate for earthen liquid manure storage facilities that require a liner but is definitely not necessary for all other types of manure storage facilities. We are opposed to broadly applied and the overly burdensome and costly

requirement of having a professional engineer prepare a construction quality assurance plan for all manure storage facilities. This provision if maintained must be limited to only those manure storage facilities that require a liner and should only be addressed in 19-12-5 and should be deleted from 19-12-4. Additionally, we suggest that if a quality assurance plan prepared by a professional engineer is submitted that it result in an expedited review of an application.

327 IAC 19-12-5

It is agreed, as has been the standard, that manure storage facilities that require a liner be developed by or under the supervision of a professional engineer and the design be certified by a professional engineer as required in 19-12-5(a).

We are concerned that the requirements outlined in 19-12-5(b) are restrictive, are not based on sound technical information, and provide a one-size fits all approach to the design of liners. The most important criteria for a liner is that it does not leak or seep beyond a reasonably attained and maintained rate to protect human health and the environment. This is dictated by the allowable seepage rate of the liner. The prescriptive requirements detailed in 10-12-5(b) are entirely unnecessary to achieve that goal. Additionally, the requirements of 19-12-5(b)(1)(A) and (B) are potentially conflicting in establishing a dual standard for liners, impose greater standards on some structures over others adding unnecessary cost, and restrict or prohibit the use of suitable materials found on-site due to the arbitrary hydraulic conductivity standard included in the rule.

We restate our previous recommendation that the allowable seepage rate be 1/32 cubic inch per square inch per day (approximately 1×10^{-6} cm/sec). It is agreed that the allowable seepage rate needs to be updated. However, the one-fifty-sixth cubic inch per square inch seepage rate is unduly restrictive. A seepage rate of 1/32 inch per day is consistent with many other states that require allowable seepage rates between 1/4" per day to 1/36" per day. This adequately addresses seepage concerns and is still one of the more restrictive seepage rates in the nation.

Specific to 19-12-5(b) the rule states that manure storage facilities must meet specific design standards. Although the requirements of 5(b)(1) through (6) are very specific there is no sound technical basis for requiring an escalating design standard based on the in-situ soils and suggests that expensive and intensive site investigations will be required to determine and demonstrate compliance with these standards. Other provisions of this rule conflict with the expectations presented in 19-12-5(b). Additionally, the escalating design standards included in 19-12-5(b) unnecessarily increase costs for no documentable benefit, restricts the effective use of economical and environmentally protective manure storage facilities to larger production sites, and disadvantages specific geographic locations of the state.

327 IAC 19-12-6

Subsection (b)(3) in 19-12-6 assumes that tanks previously used to store other substances must be contaminated with chemicals that are hazardous or may cause some other harm. A tank that was previously used to store fertilizer would not need to be cleaned to remove traces of other chemicals. We suggest that this provision be rewritten to generally require

that tanks be cleaned so that hazardous substances are removed prior to addition of manure to the tank.

The requirement that aboveground tanks have protected shut-off valves has raised the question as to the type of protection. Is the concern that they are protected from impacts by vehicles or that they are protected from vandalism?

Manure Handling and Storage; Operational Requirements

327 IAC 19-13-1

In 19-13-1(c), the draft rule indicates that manure must be in an approved structure until it is removed for land application. Removal exclusively for land application is too narrowly drafted. Manure may also be removed for staging. In addition to land application and staging, allowances should be made for other beneficial uses, such as for energy production in a digester or gasifier or pelletizing and selling. Also, manure may be transported from the site of production to another structure for storage. We suggest that to clarify any confusion which may exist with respect to transport that the provision state "Manure must be *stored* in an approved manure storage facility..."

In (h), we are unclear as to the purpose and value of the requirement for sampling field tile outlets for ammonia and suggest that it should be eliminated. This requirement is included in the section on manure storage facilities, which raises the question as to the reasoning for its inclusion in the first place. We do not believe that there is a history of problems arising from the production area which would justify annual sampling. Also, it is not clear which field tiles are to be tested. Finally, what are these samples expected to indicate? To livestock and poultry producers, this is a requirement to do something without any regard to the value, cost, or expected outcome. There may also be legal limitations on the ability of producers to monitor and sample field tiles because they do not always have access to tile outlets because they are located on the property of a different landowner or are unknown. Even if producers knew where all field tile outlets were located and had access to them, such tiles are routinely tied in to tiles from other fields meaning that the source of ammonia would be difficult to pinpoint. Furthermore, it is common for rainfall and sources of water outside of production agriculture to have elevated levels of ammonia. Although we think this provision should be eliminated altogether, if IDEM chooses to retain it, clarification is needed limiting this provision to production areas and not land application areas.

327 IAC 19-13-2

It was stated in our previous comments, and we reiterate here that energy production systems which utilize manure and other clean energy sources should not be regulated under the solid waste rules. We oppose any requirement that digesters and other energy recovery systems must register with the solid waste program.

327 IAC 19-13-3

The sentence in 19-13-3 is confusing. We think this confusion could be rectified by removing the phrase "used to move manure" from the middle of the sentence.

327 IAC 19-13-4

In the requirements for emergency spill response plans, 19-13-4(a)(1)(C) should be amended to include "land application areas" as an option for the recovery and use of spilled manure. We also believe that this section should include clarification on the amount of manure or other related liquids which must be spilled before notice must be given.

Land Application of Manure**327 IAC 19-14-2**

In 19-14-2(a), we are unclear as to the meaning and reasoning behind the phrase "except applications for new CFOs." This statement appears to be inconsistent with the rest of the draft rule.

In 19-14-2(c)(4), there appears to be a scrivener's error. Provisions for marketing and distribution of manure are found in 19-14-7, not in 19-13-5 as indicated in (c)(4).

327 IAC 19-14-3

Based upon a scientific review of nutrient application, we believe that the manure application rate requirements found in 19-14-3 are unwarranted and not based upon scientific considerations. With respect to nitrogen application, a reasonable amount of loss should be allowed based upon timing and application method. Indiana is one of the few states that does not account for nitrogen loss. We are not suggesting that there be no restrictions on the loss which can be considered. Rather we suggest that manure applications made in the summer and fall prior to a crop being planted be allowed to have an increased rate of nitrogen application which would be consistent with the rates applied from other sources of nitrogen which could be applied in the fall. This rule could limit the amount of allowable nitrogen loss or could restrict the manure application rate to a factor based upon phosphorus removal by the crop. We would be happy to work with IDEM to develop a scientifically based limit on allowable nitrogen loss.

In regard to the phosphorus application limitations, IDEM's approach does not appear to be based upon scientific considerations, and in our opinion, it establishes unreasonable restrictions. Our proposed table (provided again below) begins reducing levels in year one while IDEM's approach does not require reduction in phosphorus applications for the first three years.

It has been communicated to us that IDEM has reservations with a 10 year phase-in period such as we have proposed. Our approach demands action on the part of the producer in the first year, and it is inaccurate to refer to it as a "phase-in" for reductions. Rather it is a scientifically based approach to prohibiting applications which will lead to continued soil buildup where it is not needed from inception. Further, it is a strategy for reducing soil phosphorus levels from the time our approach is implemented.

Our recommendation, as indicated in the chart below, was to begin an immediate reduction of phosphorus applications. Based upon the best available scientific data, we

believe that reduced applications of phosphorus in fields with soil test levels of up to 300 ppm is protective of the environment. The goal of our proposal is for all fields above 200 ppm to be managed to reduce the phosphorus levels to 200 ppm. We believe that this can be accomplished while still allowing for limited applications to fields with soil test levels up to 300 ppm so long as reduced applications rates are utilized and a Soil Conservation Practice Plan demonstrates that soil loss would be below allowable T.

On the other hand, IDEM's proposal is unclear as drafted and it is arguably less protective of the environment. In any event, we do not think that it is any more protective of the environment, even though it is severely more restrictive.

We also note that the rule provisions on phosphorus application in 19-14-3(c) discuss existing or proposed "crop" to be grown. This should reference "crops" as it is entirely appropriate and necessary to apply manure based upon the phosphorus need of crops for the next several years. As written, the language could be interpreted to limit manure applications to annual phosphorus needs, which would make nitrogen irrelevant as a limiting nutrient for manure application. Additionally, limiting phosphorus to annual needs will not provide additional environmental protection because the concern with phosphorus is long-term buildup because the annual increase will be very small.

Once again, we offer our recommendations on phosphorus application for consideration for adoption into the rule.

Our recommendation for phosphorus application limits and a time period for implementation is included in the table below:

Table: Phosphorus Application Rate Limitations

Soil test level (ppm)	YEAR			
	1-2	3-5	6-10	10+
0-50	N based	N based	N based	N based
51-100	1.5 x P crop removal	1.5 x P crop removal	1.5 x P crop removal	1.5 x P crop removal
101-200	1.0 x P crop removal	1.0 x P crop removal	1.0 x P crop removal	1.0 x P crop removal
201-250	0.9 x P crop removal	0.75 x P crop removal	0.75 x P crop removal	0.75 x P crop removal with SCPP demonstrating soil loss below allowable T
251-275	0.9 x P crop removal	0.75 x P crop removal	0.5 x P crop removal	0.5 x P crop removal with SCPP demonstrating soil loss below allowable T
276-300	0.9 x P crop	0.75 x P	0.25 x P crop removal	0.25 x P crop

	removal	crop removal		removal with SCPP demonstrating soil loss below allowable T
301-350	0.7 x P crop removal	0.5 x P crop removal	0	0
351-400	0.7 x P crop removal	0.25 x P crop removal	0	0
400+	0	0	0	0

This chart places upper limits on the amount of phosphorus that can be applied to fields based upon their soil test levels. This table is consistent with recommendations that currently exist for phosphorus buildup, maintenance, or drawdown. Simply stated, phosphorus limits would be based upon crop removal, or the amount of phosphorus removed from the field in plant material through harvest. The overall goal with this proposal is to ensure that all fields used for utilization of manure will be at or below a phosphorus soil test level of 200 ppm within ten years. The only exception to this after year ten would be the ability to apply additional phosphorus to fields with a phosphorus soil test level between 200 – 300 ppm where it can be demonstrated that off-site phosphorus transport is minimized.

The immediate nature of the restrictions in year one show the commitment of livestock and poultry producers in protecting the environment and in ensuring that phosphorus application is based upon agronomic need and use. In addition, we recommend that fields which have soil tests levels of over 400 ppm not be used for further manure application until the levels are reduced such that the showing required for applications to fields with levels of 276-300 ppm can be made. For fields which have a high phosphorus soil test level (greater than 200 ppm) after the initial ten years, deeper soil sampling (up to 24 inches) would be required to show a lack of vertical movement along with conservation practices to limit erosion and runoff in order for those fields to receive additional phosphorus.

In regard to the information which must be kept in the operating record, we suggest that 19-14-3(e)(8) refer to the amount of manure available nitrogen and manure phosphorus. There must be a recognition that allowable nitrogen losses occur. Scientifically justifiable nitrogen losses can be determined.

327 IAC 19-14-4

We have several concerns with the recommendations for manure application activities in 19-14-4. In (a), we oppose the reduction of time for staging without covering the material from 72 hours to 24 hours. For fields of any size, it will be extremely difficult if not impossible to transport all of the material needed and apply it within a 24 hour period.

Without regard to the propriety of the distance of the setback, we cannot support the provision in (a)(4) with respect to setbacks from residential buildings. There is no

indication that this provision has anything to do with water quality concerns and is outside of the purview of IDEM.

As previously noted with other setback provisions related to surface waters, we believe that the requirement in (b)(1) is unduly restrictive. There is no way to guarantee that there will not be surface water within 300 feet of a staged manure pile when considering that diffuse surface water following a rain event meets the definition of surface water of the state. Additionally, we do not believe the restriction should apply to privately owned farm ponds. Also, with respect to wells, the restriction should be limited to drinking water wells for human consumption. As previously indicated, the setback should be reduced if the well is used for irrigation or livestock.

We also do not believe that there should be an automatic prohibition on staging manure in a flood plain as is proposed in (b)(3). A landowner should be able to stage manure for a limited period of time in a flood plain if conditions such as weather forecasts, river levels, and recent rainfall for both the application location and upstream watersheds are considered.

The restriction in 19-14-4(c) that manure, litter or bedding cannot be placed outside over night is unwarranted. It may take more than one day to clean out a large building, and leaving the material outside over night does not create an environmental risk. Inclement weather, which is included in the provision, is a legitimate concern to which this restriction should be limited.

In 19-14-4(d), the restriction on staging manure to the amount which can be applied in a particular field is inconsistent with normal management activities. It is common to utilize one staging area for multiple fields. This may be done because of access/lack of access to particular fields by trucks. It may also be done because a certain location provides the best opportunity to control run-on and run-off concerns. Utilizing a single staging area for multiple fields also results in one area to clean-up versus having several locations in various fields. Finally, it limits the compaction problems created by loading the manure to fewer areas.

In 19-14-4(e), the application of manure to frozen and snow covered ground is excessive. We cannot support this restriction because applications to frozen and snow covered ground can be done safely in some situations. This prohibition will unduly burden existing operations that have less than 180 days storage, which was authorized under previous versions of the confined feeding regulations. If those operations cannot apply to frozen or snow covered ground, they will have to add manure storage capacity which is cost prohibitive for small operations. Their only other option may be to close their facility. As we suggested in our previous comments, application to frozen and snow covered ground should be allowed with the creation of a winter-time manure application plan. It would also not be inappropriate for the rule to include parameters which must be met in the plan allowing for application to frozen or snow covered ground. Those criteria considered could include expectations for injection or surface applications, slope levels,

and ground cover. It would also be beneficial to include provisions for emergency applications in certain circumstances.

The prohibition in (e)(2) for manure application on saturated ground should also contain a caveat for emergency applications.

Livestock and poultry producers recognize that violations of the confined feeding rules can result in enforcement actions being taken. They also understand that actions that cause water quality violations may result in enforcement actions. However, the requirement in 19-4-4(g) seems to go too far in declaring that any manure application that results in a water quality violation will be subject to enforcement. First, this provision takes away any discretion which exists in how to handle a particular situation. Second, and more importantly, this provision seems to be stating that an agricultural stormwater exception does not exist, i.e., there is no exception for events caused by storms following manure application even when the application meets all permit requirements. This provision also does not take into account that a particular segment of water may already be in violation of the water quality standards or be so close to violation that it would be unfair to single a livestock or poultry operation out for an enforcement action. In essence, this provision is introducing a strict liability standard for confined feeding operations regardless of fault.

327 IAC 19-14-5

With respect to the restrictions on spray irrigation found in 19-14-5, we suggest that (a) is overly restrictive. It is likely that the irrigation equipment will apply the manure at a rate which exceeds the rate of infiltration at the time of application. Depressions and compacted areas in fields may have slower infiltration rates as well. A farmer should not be subject to a violation for using spray irrigation if minor ponding occurs in limited areas or some time passes before the manure is absorbed into the soil.

We also suggest that application of manure and process wastewater by spray irrigation could be allowed at reduced rates when there is less than 20 inches of soil above the bedrock.

In (d)(2), there is a restriction on spray irrigation unless the county soil survey map indicates there is a low potential for flooding. In 19-14-5(d)(3), application is allowed when there is no expectation of flooding based on available weather forecast information and rainfall or flood conditions upstream or within the drainage basin. While we would like clarification on what exactly is meant by "drainage basin," the considerations in (d)(3) provide adequate protection and the restriction in (d)(2) is unnecessary. If conditions are such that flood potential is low, even if the soil survey map indicates a higher potential for a flood, there is no adequate reason to restrict spray irrigation. Application could be made and crops planted, thereby limiting the potential for any run-off or pollution.

327 IAC 19-14-6

As noted in our comment about the definition of "incorporation," we believe that legitimate reasons exist to treat injection and incorporation separately. Thus, we recommend that the manure application setback table in 19-14-6 be revised to include a column and setbacks for injection. We suggest that the categories which exist in the current CFO rule at 327 IAC 16-10-4 are more appropriate when considering issues related to water quality protection. Injection and single pass incorporation reduce the likelihood of run-off from application, with injection providing for the greatest environmental protection from run-off. Incorporation which is accomplished in two steps does reduce chances for run-off but the chance is greater until incorporation is completed.

We also question why setback distances were changed from the previous table. Both the current CFO rule and the *NRCS Manure Application Setback Distances Table in Code 633, Waste Utilization* provide for separate categories for liquid injection/single pass incorporation and liquid incorporation. In both of these tables the decreased risk of environmental harm from injection/single pass incorporation is evidenced by the decreased setback requirements given to "Surface waters of the state," "Sinkholes," "Drainage Inlets," and "Property lines and public roads." For injection, surface waters and sinkholes were allowed a 50% reduction from the incorporation setback. For drainage inlets, only 10% of the incorporation setback requirement is required. Finally, for Property lines and public roads, there is no setback for injection, and only 10' for incorporation.

The proposed CFO rule has drastically changed these requirements. By combining injection and single pass incorporation with incorporation, IDEM is ignoring the added environmental protection of injection and single pass incorporation. In the most egregious example, the setback for property lines and public roads would go from 0 feet to 50 feet for injection. What is the technical basis for these sweeping changes in setback requirements? We recommend keeping the current CFO setback table or adopting the NRCS setback requirements.

We are unaware of any manure application issues where there has been contamination caused directly by application which was done according to the previous setback requirements. Without a history of problems as a result of the setback distances being used, we see no reason for them to be changed. As they are now proposed, these setbacks will place greater burdens on the farmer in being able to utilize manure and will require that more acreage be available than was previously required. They will require that commercial fertilizer be used in all instances in the setback area, which is an unnecessary step. At the very least, if a farmer is injecting manure, there should be no setback requirement from roads and property lines. We urge IDEM to revise the proposed rule to utilize the setback provisions in the current rule.

Also in 19-14-6, there are several references made to surface waters of the state. As is consistent with our previous comments, "surface waters" is an overly broad and somewhat ambiguous category in relation to setbacks. For instance, it should be made clear that the setbacks do not apply to private ponds.

We also note that the requirements in 19-14-6(b) and (c) are found in 19-14-4. While they are consistent, they should be included in one place to minimize the size of the rule. It is also important that provisions only be included once in the event that subsequent amendments are made but not all provisions are changed. There are many examples in statute and regulation where duplicate provisions exist and not all were changed, resulting in inconsistency and confusion.

We recognize that inspecting field tile outlets can be valuable in providing protection to the environment. In 19-14-6(e), we have some concern with requirements on producers to have knowledge of field tile outlet locations. Producers should only be responsible for monitoring those field tile outlets that are reasonably identifiable. We propose that (e) should read: "Land application sites must be inspected to locate any *reasonably identifiable* field tile outlets..."

327 IAC 19-14-7

The marketing and distribution of manure has been a successful practice in providing nutrients where they are needed.

Some livestock and poultry operations annually distribute all of their manure and litter. For those operations who can document that they have historically sold 100% of their manure and litter, we believe that it would be appropriate to eliminate the requirement that they maintain any available acreage for land application. Thus, we suggest that 19-14-7(e) be revised to reflect that IDEM may allow for a waiver of up to 100%. We understand that the concern is that land be available in an emergency situation or in the event that someone would cancel an agreement to take manure or litter. This provision may not adequately address that particular situation. Even if enough land application area is documented to handle 25% of the manure volume, there is no guarantee that the listed application areas would be available at the time of an emergency. Furthermore, a history of marketing manure should be proof that the operation would be able to find a market for manure in emergency situations.

Also in (e), we believe that the offset should be for 100% of the manure that is marketed. In other words, we suggest that a 1:1 ratio be employed in waiving the requirement to maintain acreage for manure application.

We also suggest that an operation should not have to wait two years before being able to offset the available acreage requirement by marketing manure. In the event that a new operation is able to provide documentation that someone will purchase manure or litter, that evidence should be sufficient to seek a 1:1 reduction in acreage needed.

Decommissioning of Manure Storage Facilities

327 IAC 19-15-1

With respect to decommissioning a manure storage structure, we are uncertain about the meaning of "when the environmental threat has been removed" in 19-15-1. This

provision is extremely subjective. While it appears that the requirements for decommissioning in 19-15-2 may address the meaning of the provision in 19-15-1, we are concerned that it could be determined that complying with 19-15-2 is not adequate to satisfy 19-15-1. We suggest that 19-15-1 be eliminated and that 19-15-2 control the decommissioning of a manure storage structure.

327 IAC 19-15-2

We urge that 19-15-2(c) be amended to include written reasons from the commissioner when requiring additional decommissioning activities.

We also urge IDEM to recognize that allowances should be made for alternative approved closure plans on a case by case basis that consider future plans for the manure storage structure.

Exiting the Confined Feeding Approval Program

327 IAC 19-16-2

When an operation seeks to exit the CFO program because of a reduction in herd size, the criteria they must meet should be clear. In the requirements in 19-16-2(b), no actual standards are given. Rather, there is information which must be shown in order for the commissioner to determine whether an operation can exit the program. While we recognize some subjectivity may be needed because of past violations, issues such as manure inventory should not be left without specific requirements. A reduction in capacity represented by a percentage of total capacity or some similar requirement should be made in order to ensure consistency and transparency for exiting the program. Also, we suggest that a provision be included that clearly indicates the level of environmental compliance needed to exit the program. As an example, a history of no discharges within the previous five years should be sufficient to qualify an operation for exiting the program so long as the other conditions are met.

327 IAC 19-16-3

In closing an operation, much discussion has been devoted to "how clean is clean enough?" In 19-16-3(b), it is proposed that all manure be disposed of or land applied prior to closing the operation. This provision does not include the considerations made previously in the rule with respect to decommissioning a facility. Specifically, they do not allow for removal to the extent practicable. Issues exist with respect to how much sediment to remove from a lagoon which is being converted to a farm pond. The presence of some sediment could be beneficial. If the lagoon is going to be maintained as a pond, removing all of the manure could cause damage to the liner. Also, concrete pits may contain minimal amounts of manure which are bound to the concrete or which exist along crevices and edges. That material can be appropriately handled when the site is demolished, but attempting to remove it prior to that time will be expensive and potentially damaging if the structure may later be put back into operation. Again, the same set of requirements will not fit the characteristics of every closure. A determination of "how clean is clean" for a particular site should be based on the site specific

conditions required for the planned future use of the property while also ensuring protection of water quality.

Conclusion

Once again, thank you for allowing the Livestock and Poultry Rule Revision Group the opportunity to comment. We look forward to the opportunity for further dialogue on this rule proposal and its implementation guidance and welcome the opportunity to explain our comments.